

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

Jeannette Nelson,

Complainant,

v.

Nekton, Inc.,

Respondent.

**ORDER ON MOTION
FOR SUMMARY DISPOSITION**

The above-entitled matter is before the undersigned Administrative Law Judge on Respondent Nekton, Inc.'s Motion for Summary Disposition. Respondent filed this motion on September 13, 1995. Complainant Jeannette Nelson filed a memorandum in opposition to Respondent's motion on September 25, 1995. Thereafter, the record on this motion closed.

Based upon the file, record, and written submissions herein, and for reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED:

1. That Complainant's request for an oral argument is denied under Minn. Rule 1400.6600 as not necessary to the development of a complete record for a decision in this matter.

2. That Respondent Nekton's motion for summary disposition is denied.

Dated this 9th day of October, 1995

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

On or about November of 1990, Complainant was hired by Respondent as a residential manager at Respondent's Imperial Court Group Home. In March of 1992, Complainant was made the sole supervisor of the group home and managed the day-to-day care of its mentally retarded residents. Between 1992 and the date of her termination, Complainant received three performance reviews indicating that she "meets expectations". On June 3, 1994, Complainant was terminated from her supervisory position. On this date, Complainant's salary was \$10.91 an hour. Respondent offered Complainant a \$9.00 an hour counselor position, which Complainant declined. Complainant was informed that the reason for her termination was the "high turnover rate" of staff. After her termination, Complainant filed a discrimination complaint with the Department of Human Rights.

Complainant alleges that she was terminated by Respondent because of her sexual orientation. Complainant is a lesbian and is protected from discrimination based on her sexual orientation pursuant to Minn. Stat. § 363.03, et seq. Respondent denies that Complainant's sexual orientation was the basis for her termination. Respondent insists that it had no knowledge of Complainant's sexual orientation. Rather, Respondent maintains that Complainant was terminated due to her poor supervisory skills.

Respondent has moved for summary disposition. Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law. Minn. Rule. pt. 1400.5500 K; Minn.R.Civ.P. 56.03. When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party, Ostendorf v. Kenyon, 347 N.W.2d 834 (Minn. Ct. App. 1984). To successfully resist a motion for summary judgment, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case. Thiele v. Stitch, 425 N.W.2d 580, 583 (Minn. 1988); Hunt v. IBM Mid America Employees Federal, 384 N.W.2d 853, 855 (Minn. 1986).

In the instant case, Respondent argues that Complainant was terminated due to her poor supervisory skills and the high turnover rate of staff members at its Imperial Court Group Home. In particular, in the Spring of 1994, Respondent claims it received complaints from staff that Complainant was verbally abusive as a supervisor. According to the complaints, Complainant yelled at staff members, used profanity, and threatened employees with termination. Respondent argues that it is entitled to summary disposition because Complainant has put forth no material facts to support her claim that her discharge was based on discriminatory reasons. Respondent points out that Complainant admits in her Answers to Requests for Admissions, that she never informed Respondent of her sexual orientation and she admits that she has no knowledge of sexual orientation discrimination by Respondent other than her own discharge. (Exhibit A-9,10 Complainant Admissions.)

Contrary to Complainant's allegations, Respondent maintains that it has a good reputation as a place of employment for gays and lesbians. Respondent has currently,

and has had in the past, openly gay and lesbian persons on its staff. Respondent has submitted several Affidavits in support of its motion from current and former employees. These affidavits support Respondent's claims that Complainant was a poor supervisor who yelled at staff members. The affidavits from current and former gay employees also attest to Respondent's non-discriminatory work environment.

Complainant opposes Respondent's motion for summary judgment. Complainant maintains that she has established a prima facie case of discrimination under McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). That is, she is a member of a protected class, she was qualified for the job, adverse action was taken against her, and the employer replaced her with a non-member of the protected class. See, Ward v. Employee Development Corporation, 516 N.W.2d 198 (Minn. Ct. App. 1994) (review denied). Therefore, the burden of proof shifts to the Respondent to articulate a legitimate non-discriminatory reason for the adverse action. Id.

Complainant argues that Respondent's stated reasons for her termination, namely "high staff turnover" and poor supervisory skills, are merely a pretext for discrimination. Complainant points out that she always met expectations on her performance reviews and, prior to her dismissal, no mention was made of complaints or problems with her supervisory style. In addition, Complainant denies ever having directed profanity at the employees she supervised.

Complainant asserts that, given the conflicting information regarding her work performance, genuine issues of material facts exist as to the reason for her termination. Complainant also maintains that some of the employees whom she supervised did not approve of her sexual orientation. Complaint states in her affidavit that she received information from a co-worker that employees whom Complainant supervised discussed Complainant's sexual orientation on at least one occasion prior to Complainant's termination. (Affidavit of Nelson at pp. 12, 13.)

In viewing the facts in the light most favorable to Complainant, the Administrative Law Judge finds, for purposes of this motion only, that Complainant has established a prima facie case of employment discrimination based on sexual orientation. It is appropriate, therefore, to discuss the employer's reason for discharge and whether it is a pretext for discrimination. The Complainant has produced sufficient evidence to establish the existence of genuine issues of material fact as to the reason for Complainant's termination and the extent of other employees' awareness of her sexual orientation. For example, the Complainant denies using profanity in the course of her supervision duties. The Respondent's evidence will apparently indicate otherwise. This factual dispute is material to the issue whether the employer's reason for discharge is pretextual. Therefore, Respondent's motion for summary disposition must be denied.

G.A.B.